

# BUSINESS WEEKLY

under the auspices of  
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #119 / PARSHAS EIKEV  
FRIDAY, AUGUST 10, 2012  
22 AV 5772

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Summer Plans

Mr. Blank worked through the summer, so his family stayed in the city.

"It would be nice to get away to the country at least for a weekend," his wife suggested. "Great idea!" Mr. Blank replied. "See if you can find a place."

Mrs. Blank searched the ad section of the Jewish newspaper.

"Here's one," she said. "Summer home available for weekends. Call Mr. Zimmer for details."

Mr. Blank called Mr. Zimmer. "Is your summer home available for the last weekend in August?"

"It's available, and it costs \$500 for the weekend," replied Mr. Zimmer.

"Then we are interested in reserving the house for that weekend," Mr. Blank said.

"Excellent," said Mr. Zimmer. "Payment is due when you arrive."

A week later, Mrs. Blank received a call from her sister. "We're invited to a bar mitzvah at the end of August," the sister said. "Our summer home is available that weekend if you'd like to use it."

"That's so nice of you!" exclaimed Mrs. Blank. "We actually reserved a summer home for that Shabbos, but if yours is available, that would save us the expense!"

Mrs. Blank turned to her husband. "My sister just offered us her summer home for the last weekend of August," she said. "Can you call Mr. Zimmer and cancel the reservation?"

Mr. Blank called Mr. Zimmer. "We reserved your summer home for the end of August," he said, "but we do not need it now and would like to cancel the reservation."

"But you already confirmed the reservation," said Mr. Zimmer. "You can't just back

out now — that's dishonest."

Mr. Blank was troubled. He saw Rabbi Dayan in shul that evening and asked if it was permissible to cancel the reservation.

"Just as a sale requires an act of acquisition (kinyan) to make it legally binding, so too, a rental agreement requires a kinyan to make it legally binding," said Rabbi Dayan. "Therefore, although you reserved the bungalow over the phone, since no kinyan or payment was made, you have the legal ability to cancel the reservation. To prevent this, it is wise for landlords to demand a deposit payment (195:9; 315:1)."

"Words alone mean nothing?!" Mr. Blank asked, astounded.

"Words are meaningful, and a person has a moral obligation to honor his verbal commitments," replied Rabbi Dayan. "One who does not uphold his word is called me-

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## The Marriage Contract

*Submitted by H. T.*

Reuven approached his Rav with the following story: He was married earlier in the week and the officiating Rabbi (mesader kiddushin) used Reuven's handkerchief to make the kinyan before the signing of the kesubah (marriage contract). A friend mentioned that the Rabbi should have used either his own handkerchief or one belonging to a witness.

**Q: Does Reuven have to perform a new kinyan and draw up a new kesubah?**

**A:** The observer is correct, and the kinyan was invalid. The kinyan that you mentioned is called kinyan sudar, lit., a proprietary act performed with a handkerchief or other item. The kinyan is essentially an exchange of the handkerchief for the object or right being conveyed. As such, it is effective only if the one acquiring (koneh) gives his object

to the one conveying the object (makneh) to effect the exchange (C.M. 195:1). If the handkerchief of the makneh is used, the kinyan is invalid.

In the case of a wedding, the chassan (groom) conveys the rights and obligations of the kesubah (makneh) and the kallah (bride) acquires those rights (koneh). As such, it is necessary to use the kallah's object to effect the exchange.

Nevertheless, an object belonging to a third

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chusar amana, lacking in trustworthiness, and possibly even wicked (204:7)."

"So it is wrong to cancel the reservation?" asked Mr. Blank. "It would be if you hadn't received the offer from your sister-in-law," replied Rabbi Dayan. "There is a dispute whether a verbal commitment is morally binding when there was a change in market conditions. The Rema (204:11) cites both opinions, and favors the opinion that one should not retract even in this case. However, later authorities lean toward the lenient opinion (Pischei Choshen, Kinyanim 1:5[5]).

"The Chasam Sofer (C.M. 102) writes," continued Rabbi Dayan, "that a change of circumstances, when another unit was already received for free, is certainly like a change in market conditions and is not considered a breach of integrity."

"What if I wasn't offered the other bungalow for free, but

found a better deal?" asked Mr. Blank. "Would that also be considered a change in market conditions?"

"The Sm"a (333:1) indicates that is so," answered Rabbi Dayan, "but this is questionable unless there was some new development in the market, so one who is scrupulous should be careful (Emek Hamishpat, Sechirus Batim 9)."

"What if Mr. Zimmer had turned away other potential renters meanwhile?" asked Mr. Blank.

"That's a different story," replied Rabbi Dayan. "If he turned away other potential renters on your account and cannot find others, this might be considered sufficiently direct damage (garmi) to require compensation, as we find regarding workers (333:2; Sm"a 333:8). On the other hand, it is not actual damage, only lost profit (grama), so it is proper to compromise (see Pischei Choshen, Sechirus 10[10]; Pischei Teshuvah 312:4)."

party also effects a valid kinyan sudar. Thus, it is common practice in commercial deals to use an object belonging to one of the witnesses to perform the kinyan sudar, since this kinyan is often done in the absence of the koneh (C.M. 195:3). Similarly, it is customary to use an object belonging to the mesader kiddushin or one of the witnesses for the kinyan at a wedding.

The truth is that a kinyan might not be necessary to obligate the chassan on the basic duties of kesubah. The basic matrimonial duties recorded in the kesubah are compulsory by halacha and take effect upon marriage (see E.H. 66:8).

However, once a kesubah is written, it must be truthful to be

valid. One of the statements in the kesubah is the declaration of the witnesses that a proper kinyan was performed. If the chassan's object was used for the kinyan sudar, it was an invalid kinyan and the witnesses' statement regarding the kinyan is false.

Therefore, even if the mistake was discovered on the day of the wedding, the invalid kesubah must be torn up and a replacement should be written following a valid kinyan (see Minchas Pitim E.H. 66:1, Kesubah K'hilchaso, p. 151). If the error is discovered after the day of the wedding, it is necessary to write a special replacement kesubah for the invalid kesubah (kesubah d'ishtakach ta'usa).

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## Shomrim: Guardians #19

**Q: I was entrusted with a sum of money. May I use it temporarily and return other money?**

**A:** We learned that a guardian may not misappropriate an entrusted item for his own use (C.M. 292:1). However, since it is expected that money is spent and replaced, sometimes the guardian is allowed to use it. For example, a banker or moneychanger who was entrusted with money is permitted

to use it unless there is a contraindication (e.g. the money was entrusted in a sealed envelope). On account of this privilege, even an unpaid guardian has the heightened status of a shomer sachar; if he uses the money, he becomes a sho'el (292:7). Some authorities write that since money is continuously needed by everybody nowadays, the rule of a banker pertains to all (Sm"a 292:18; however, see Pischei Choshen, Pikadon 5:53).

If the person was entrusted to deliver money or to buy something with it, many authorities do not allow him to use it meanwhile, since the money was not entrusted for any length of time (Pischei Teshuvah 292:2). If he does, some consider him sholei'ach yad (embezzling). Even when the guardian may not use the money, many authorities permit him to do so if he designates other money immediately in its place (Pischei Choshen, Pikadon 5:20-21).

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